

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

BERHANU JACOB,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
EDUCATION,

Defendant.

No. 2:22-cv-00160 DAD AC

ORDER

Plaintiff, appearing in pro se, filed a complaint and paid the filing fee on January 26, 2022. ECF No. 1. That same day, a scheduling order was issued which ordered the plaintiff to serve a copy of the scheduling order and complete service of process within 90 days of filing the complaint. ECF No. 3 at 1. Plaintiff was cautioned that failure to complete service within 90 days may result in dismissal pursuant to Fed. R. Civ. P. 40(m). Id. The undersigned issued an order to show cause regarding lack of service. ECF No. 4. Plaintiff timely provided an affidavit regarding service of process. ECF No. 5.

Review of plaintiff's submission shows that while plaintiff attempted service, service was not properly completed. Plaintiff is suing a federal agency, the United States Department of Education. The Federal Rules of Civil Procedure have specific rules for serving federal agencies. Fed. R. Civ P. 4(i). As explained in the Federal Rule, to serve a federal agency plaintiff must (1)

1 send a copy of the summons and of the complaint by registered or certified mail to the agency,
2 corporation, officer, or employee and (2) serve the United States by delivering either delivering a
3 copy of the summons and of the complaint to the United States attorney for the district where the
4 action is brought—or to an assistant United States attorney or clerical employee whom the United
5 States attorney designates in a writing filed with the court clerk—or send a copy of each by
6 registered or certified mail to the civil-process clerk at the United States attorney's office; (3)
7 send a copy of each by registered or certified mail to the Attorney General of the United States at
8 Washington, D.C.; and (4) if the action challenges an order of a nonparty agency or officer of the
9 United States, send a copy of each by registered or certified mail to the agency or officer.

10 Plaintiff's affidavit of service shows only that plaintiff served the United States
11 Department of Education at 400 Maryland Ave., SW, Washington, DC. ECF No. 5. Service is
12 not complete because plaintiff did not also serve the United States and the United States Attorney
13 General.

14 For good cause, IT IS HEREBY ORDERED that:

15 1. Plaintiff shall properly complete service of process, in accordance with Fed. R. Civ. P.
16 4(i), within 30 days of this order and file proof of service demonstrating that proper
17 service has been completed;

18 2. The status conference currently set for September 28, 2022 is VACATED and will be re-
19 set as necessary; and

20 3. If plaintiff fails to comply with this order, the case may be dismissed without prejudice for
21 failure to prosecute.

22 DATED: September 26, 2022

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24 ALLISON CLAIRE
25 UNITED STATES MAGISTRATE JUDGE

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